

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number <b>Q79775</b>	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed	
	10/781,627	February 20, 2004	
	First Named Inventor		
	Volker BRAUN		
	Art Unit	Examiner	
	2617	Randy PEACHES	
<p style="text-align: center;">WASHINGTON OFFICE <b>23373</b> CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p> <p>Registration number    60,658</p> <p style="text-align: right;">/Albert DeCady/ Signature</p> <p style="text-align: right;">Albert DeCady Typed or printed name</p> <p style="text-align: right;">(202) 293-7060 Telephone number</p> <p style="text-align: right;">October 17, 2007 Date</p>			

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q79775

Volker BRAUN, et al.

Appln. No.: 10/781,627

Group Art Unit: 2617

Confirmation No.: 4136

Examiner: Randy PEACHES

Filed: February 20, 2004

For: A METHOD OF TRANSMITTING DATA IN A WIRELESS CELLULAR  
TELECOMMUNICATION NETWORK

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated May 17, 2007, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

**Applicant turns now to the rejections at issue:**

At issue is whether Hamabe et al. (European Publication No. EP 1 237 296 A2, hereinafter "Hamabe") anticipates the claimed invention as described in the independent claims. Applicant respectfully submits that the rejection is improper and that the final rejection should be withdrawn and the subject application allowed.

As of the final rejection, dated May 17, 2007, claims 1-4, 6-10 are rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Hamabe .

With respect to claim 1, Applicant maintains that Hamabe fails to teach or suggest each feature of claim 1. For example, claim 1 recites determining a share of the load which is due to the transmission over the first channels by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier.

The claimed invention recites in part “a method of transmitting data over first and second channels, the first channels having a predefined grade of service and the second channels having a variable grade of service...**determining a share of the load which is due to the transmission over the first channels by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier**; determining the difference between a maximum load and the share of the load which is due to the transmission over the first channels, and **controlling the transmission over the second channels on the basis of the difference.**”

In contrast, Hamabe relates to a method for controlling a sum of transmission powers for all channels for transmissions to be constant. Specifically, a value for the amplified power from the amplifier is supplied for the controller, and indicates a current transmission power.

Paragraph 0041. The controller determines the transmission power for the shared channel according to the transmission power of the dedicated channels, so that a sum of transmission powers for the shared channel and for the dedicated channels is maintained constant. Paragraphs 0020 and 0021. Hamabe teaches “if the sum of transmission powers is larger than an upper limit, it decreases the transmission power for shared channel by a difference between the sum and the upper limit, and if the sum of transmission powers is lower than a lower limit, it

increases the transmission power for shared channel by a difference between the sum and the lower limit.” [0022]

In Hamabe, the power in the shared channels will be forced to a constant. While, in the claimed invention, the power will adjust to the difference between a maximum load and the share of the load which is due to transmission over the first channels. In this way, the power is shared between the first channels and the second channels keeping the power in the first channel at the proper level to maintain the predefined grade while allowing the grade to vary in the second channel.

Hamabe does not suggest determining the transmission power for the dedicated channels, which allegedly correspond to the first channels, by subtracting the transmission power for the shared channel, which allegedly corresponds to the second channel, from the transmission power of the amplifier. The transmission power of the shared channel is increased/decreased, when the transmission power of the dedicated channels is increased/decreased. Therefore, in Hamabe, the transmission power of the dedicated channels is monitored or measured. In contrast, according to exemplary embodiments of the present invention as described in claim 1, a share of the load which is due to the transmission over the first channels is calculated by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier.

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102 (e) only if each of the elements as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further the identical invention must be shown in as complete detail

as is contained in the claim. Finally, the elements must be arranged as required by the claim.

Manual of Patent Examination and Procedures (MPEP) section 2131.

Here, Hamabe fails to teach , at least, the steps of “determining a share of the load which is due to the transmission over the first channels by subtracting the share of the load which is due to the transmission over the second channels from the actual load of the transmit power amplifier; determining the difference between a maximum load and the share of the load which is due to the transmission over the first channels, and controlling the transmission over the second channels on the basis of the difference”, as described in the independent claims.

Therefore, Applicant submits that the claimed invention is not anticipated by Hamabe.

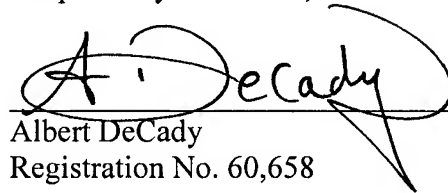
In view of the foregoing, Applicant respectfully requests a Panel review and further requests that the final rejection be withdrawn.

Claims 2-4 and 6-7 are patentable at least because of their dependency from claim 1.

Claims 8-10 are patentable at least for reasons analogous to reasons submitted above regarding claim 1. Claims 8-10 recite features analogous to those of claim 1 that are not taught by Hamabe as explained above.

Applicant respectfully requests that the final rejection be withdrawn on all the claims and further Applicant earnestly solicits the allowance of the claims.

Respectfully submitted,

  
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